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| APPLICATION NO.                                                     | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|---------------------------------------------------------------------|-------------|----------------------|--------------------------------|------------------|
| 10/762,815                                                          | 01/22/2004  | Jan Weber            | 10527-531001                   | 6109             |
| 26161                                                               | 7590        | 09/11/2007           |                                |                  |
| FISH & RICHARDSON PC<br>P.O. BOX 1022<br>MINNEAPOLIS, MN 55440-1022 |             |                      | EXAMINER<br>TRUONG, KEVIN THAO |                  |
|                                                                     |             |                      | ART UNIT                       | PAPER NUMBER     |
|                                                                     |             |                      | 3734                           |                  |
|                                                                     |             |                      | MAIL DATE                      | DELIVERY MODE    |
|                                                                     |             |                      | 09/11/2007                     | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                               |                            |  |
|------------------------------|-------------------------------|----------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/762,815 | Applicant(s)<br>WEBER, JAN |  |
|                              | Examiner<br>Kevin T. Truong   | Art Unit<br>3734           |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) 1-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19, 20, 22-26, and 63-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

Note: This is in response to an amendment filed 06/22/2007.

#### ***Election/Restrictions***

1. Newly submitted claim 76 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicants confirm the election of the species of figures 1-4 and 9 on 07/14/2007. It is noted that the examiner finding claims 1-17, 19, 20, 22-26, and 63-66 read on elected species of figures 1-4 and 9. As a result, the examiner properly withdrew claims 18, 21, 27-62, and 67-75 from consideration as being drawn to a non-elected invention. Applicant has now added new independent claim 76 and amended claims 1-75 to depend from new added independent claim 76 which drawn to non-elected figure 7.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 76 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-17, 19, 20, 22-26, and 63-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Stinson et al. (U.S. 6,340,367).

Note in figures 1-5, a polymer wire (14) extending spirally in a first direction about a longitudinal axis of the expandable stent (10) and metal wire (16) extending spirally in a second direction about direction about the longitudinal axis, wherein the second direction being counter to the first direction and furthermore, wherein the Stinson et al described the materials formed of metal wire (16) and polymer wire (14) (see col. 3, line 60 through col. 4, line 27 and col. 7, line 65 through col. 9, line 55).

### ***Response to Arguments***

Applicant's arguments filed 06/22/2007 have been fully considered but they are not persuasive. The Examiner disagrees with Applicant's remarks and has maintained the grounds of rejection under 35 U.S.C. 102 (b) as being anticipated by Stinson et al. (U.S. 6,340,367) for the reasons as set forth in the above rejection and previous office action as stated.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

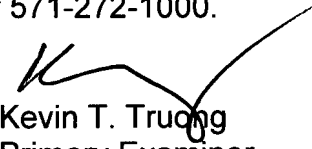
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kevin T. Truong  
Primary Examiner  
Art Unit 3734

ktt